Supreme Court, U.S.
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No. 06-681

In The

SUPREME COURT OF THE UNITED STATES

October Term, 2006

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NANCY D. JONAS
Petitioner,

v.

SOUTH CAROLINA DISCOUNT AUTO CENTER
Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of South Carolina

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Judgment of Curtis Lee Coltrane, Master-in-Equity, Special Circuit Judge for the Fourteenth Judicial Circuit of South Carolina entered September 15, 2003 is void *ab initio* due to the fact that the case was pending in the Supreme Court of South Carolina and due notice was provided to Judge Coltrane and the attorneys for South Carolina Discount Auto Center of Beaufort?

2. Whether the facts and evidence support the contention that the initial court was corrupt, allowing undue influence causing the judgments to be tainted and whether the judicial conduct is subject to Article VI, U.S. Constitution and whether full and fair consideration and equal protection was available as a right under the Fourteenth Amendment, U.S. Constitution to the Petitioner and other citizens?

3. Is there a presumption that the law governing auto repairs in South Carolina does not meet constitutional muster but should be viewed pursuant to the more recent S.C. Consumer Protection and Unfair Trade Practices Act reflecting the federal law and legislation in the majority of other states including neighboring North Carolina reforming auto repair practices?

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INTRODUCTION

To the Honorable John G. Roberts, Jr. Chief Justice of the United States, and to the Honorable Associate Justices of the United States Supreme Court:

Nancy D. Jonas, petitioner, seeks a Writ of Certiorari to the Supreme Court of South Carolina from the Order entered August 15, 2006 denying Writ of Certiorari to that court.

PARTIES TO THE PROCEEDING

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of Beaufort, South Carolina
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Attorneys for Respondents

OPINIONS AND ORDERS BELOW

The Supreme Court of South Carolina entered its Order on August 15, 2006, a copy of which can be found in the Appendix.

JURISDICTION

(i) The Supreme Court of South Carolina denied Petitioner's Writ of Certiorari on August 15, 2006. A copy of that Order may be found in the Appendix.

(ii) Jurisdiction to review by certiorari a decision of a state supreme court is provided under 28 U.S.C. § 1257 and Article III, U.S. Constitution.

STATUTES and RULES INVOLVED

Amendment 14, U.S. Constitution; Article VI, U.S. Constitution, The Federal Trade Commission Act § 5(a)(1); 15 U.S.C. § 45(a)(1); S.C. Consumer Protection and Unfair Trade Practices Act § 39-5-10 *et seq.* (1976 & Supp.1980); 42 U.S.C. § 1983; S.C. Code Ann. § 39-5-20(a) and relevant decisional law. South Carolina Rules of Civil Procedure, Rule 60, SCRCP; South Carolina Rule of Civil Procedure, 41(b), SCRCP; South Carolina Appellate Court Rules, Rule 229, SCACR.

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NANCY D. JONAS
Petitioner,

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SOUTH CAROLINA DISCOUNT AUTO CENTER
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On Petition for Writ of Certiorari to the
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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that the Petition for Writ of Certiorari will be granted in this proceeding.

STATEMENT OF THE CASE

This case comes before the Court for review upon the Order of the Supreme Court of South Carolina filed August 15, 2006. This court denied certiorari of the Order of The South Carolina Court of Appeals filed February 18, 2005 which affirmed a circuit order of dismissal pursuant to South Carolina Rules of Civil Procedure, Rule 41(b), SCRCP. The Petitioner contends that the Order of the Circuit Court filed September 15, 2003 was void *ab initio* because the Petitioner filed a Petition in the Supreme Court of South Carolina on September 10, 2003 removing jurisdiction and cites the controlling case law, Noack Enterprises, Inc. v. Country Corners Interiors, Inc., 290 S.C. 475, 351 S.E.2d 347 (Ct App. 1986). Both Special Circuit Judge and Attorneys for Discount were served. Two subsequent Form Orders by Special Circuit Judge Curtis L. Coltrane followed dated January 6, 2004 and January 26, 2004 responding to Motions for Reconsideration and Plaintiff's Objection. Because of the pending Petition before the Supreme Court of South Carolina removing jurisdiction, Petitioner did not attend the hearing on September 15, 2003.

Before the Master-in-Equity, Special Circuit Judge Curtis L. Coltrane at the September 15, 2003 hearing were three motions, not just one: Petitioner's Motion for Relief from Judgment pursuant to Rule 60 filed January 12, 1999 by Leave of The South Carolina Court of Appeals filed December 22, 1997;

Petitioner's Motion to Dismiss filed January 16, 2003; and Petitioner's Motion for an Order to Recuse JudgeThomas Kemmerlin, Jr. dated March 25, 2003. According to Judge Kemmerlin's Roster only the Motion to Dismiss was scheduled for hearing March 26, 2003. Petitioner was provided notice by Plaintiff's attorney, James A. Grimsley, III, dated March 25, 2003 that Petitioner's Motion to Dismiss hearing scheduled for March 26, 2003 had been continued. Next, Petitioner received Notice from Master-in-Equity, Special Circuit Judge Curtis L. Coltrane that Petitioner's Motion to Dismiss would be heard on September 15, 2003. Through their attorneys, Plaintiff, South Carolina Discount Auto Center of Beaufort filed a Memorandum in Opposition to (all) the Defendant's Motions dated September 12, 2003. Judge Coltrane conducted the hearing on September 15, 2003 despite having been served notice that the case had been filed in the Supreme Court of South Carolina. Relevant Orders of the Supreme Court of South Carolina pertaining to that Petition are dated September 25, 2003 and November 6, 2003 with cover letters showing a copy of the Order had been sent to Judge Coltrane and Discount's attorneys.

The Petitioner had concerns that the Motions would not be given meaningful access and a fair and full hearing that is a right under the U.S. Constitution, Fourteenth Amendment. The case has never been heard on the merits. The basis for the concern given the history of the case is enumerated below.

South Carolina Discount Auto Center initiated the suit to collect $815.55 from the Petitioner for auto repair service when the agreement and authorization was for costs running between $400.00 and $500.00. Petitioner said she would pay that amount but Discount Auto said they would get the nearly double amount in Magistrate's Court and hung up. Later it was determined that some of the work involving the ISA motor and throttle body was poorly done. In the course of the proceedings, Petitioner learned that Discount had brought six dozen cases to Magistrate's Court while they had operated their business for just a short time. This trial judge Magistrate George B. Brown resigned from office on February 2, 2000 after being indicted for embezzlement of court funds. The Petitioner contends the judgment of the trial court and Beaufort County Magistrate Judge George B. Brown is tainted.

Discount had a contract with AAA agreeing that they would provide a written estimate to customers for repair work. When it was apparent that Discount did not honor their AAA contract, Discount lost their AAA endorsement as a AAA repair facility. South Carolina Mechanic's Lien Laws South Carolina Code Ann. 29-5-10 *et seq*. allow a repair facility to repair anything they want even if the customer did not authorize the repairs. These practices are injurious to the public interest and are repetitive in this case. Daisy Outdoor Advertising Co., Inc. v. Abbott, 451 S.E. 2d 394 (Ct. App. 1994). AAA Go Magazine July/August 1994 quoted the S.C. Attorney General's

Department of Consumer Affairs spokeswoman who said, "If we didn't have auto repair complaints, we'd be out of business." Vehicle repair complaints are among the top three complaints submitted to the South Carolina Department of Consumer Affairs. More than two-thirds of the states in the nation have consumer protection laws for auto repairs including neighboring North Carolina. AAA Carolinas 2002-2003 Legislative Survey resul report 91% favor passing legislation establishing a consumer's bill of rights that would include a requirement that a written estimate of work be provided. AAA is seeking five features in auto repair laws: 1. a detailed description of specific actions which are unfair or misleading with appropriate civil and criminal penalties; 2. Customer rights and responsibilities prominently displayed at the repair facilities; 3. A written estimate of repair costs and a guarantee that the price will be within 10% of the estimate unless authorized by the customer; 4. Repairs to be covered by a warranty for 90 days or 4,000 miles, whichever occurs first; 5. Replaced parts returned to the customer except when under a warranty or a refund policy. In South Carolina there is a powerful automotive lobby, the Automotive Dealer's Association, that opposes reforms despite efforts by State Senator David Thomas, a member of the Senate Banking and Insurance Committee. This law in is conflict with the more recently enacted South Carolina Consumer Protection and Unfair Trade Practices Act of 1976 codified § 39-5-10, *et seq.* (1976 & Supp. 1980). The state law was modeled on The Federal Trade Commission Act, 15 U.S.C. § 45

(1976) and includes a legislative mandate that state courts "will be guided by" FTC and federal court interpretations of the Act from time to time amended. The South Carolina Consumer Protection and Unfair Trade Practices Act is a statute implemented by the Attorney General's office. South Carolina Code Ann. § 39-5-13 (1976) provides for enforcement. The provision permits the state to seek injunctions, restitution for injured persons, civil penalties, and the dissolution, suspension, or forfeiture of a corporate charter or franchise. The motion by Discount's lawyer, James A. Grimsley, III, dated September 12, 2003 identifies Discount as a South Carolina as being incorporated. Willful violations give rise to treble damages along with an award of attorney's fees. A permanent injunction issued in a state action is *prima facie* evidence of a violation in a private action on the same facts. This discussion is relevant because former Circuit Judge Thomas Kemmerlin, Jr. and former Clerk of Court Gloria Williams did not follow statutory procedure to institute an investigative inquiry or recognize the applicability of the South Carolina Consumer Protection and Unfair Trade Practices Act even though a motion was filed that would have mandated the procedure dated August 4, 1997 prior to the appeal *de novo* hearing on August 5, 1997. A Form Order filed August 12, 1997 erroneously dismissed the case and relying on the Order, the Petitioner missed timely filing the appeal. Former Special Circuit Judge Thomas Kemmerlin, Jr. has shown bias in *ex parte* remarks to litigants and in holding hearings and issuing orders when there was a

Stay pursuant to 28 U.S.C. § 1446(d) as a matter of law; Davis v. Davis, 229 S.E.2d 847 (1976).

Magistrate Judge George B. Brown issued an Order to Extend Time for Appeal to October 12, 1997 that was undated and unacceptable to The South Carolina Court of Appeals who ruled the appeal was untimely by Order filed December 19,1997 of Judge C. Tolbert Goolsby, Jr. J. In filing the Motion for Relief from Judgment in the trial court of Magistrate Judge George B. Brown on January 12, 1998 upon the Grant of Leave to proceed filed December 22, 1997, the Petitioner requested the Motion for Relief be held in abeyance until the Motions for Reconsideration and for Protection were determined by The South Carolina Court of Appeals in February 1998. These Motions were promptly disposed of allowing the trial court of Magistrate Judge Brown to consider the Motion for Relief from Judgment pursuant to South Carolina Rules of Civil Procedure, Rule 60, SCRCP. One could argue that the Motion possessed additional authority given that Leave to Proceed in the Trial Court with a Rule 60 motion was granted by Order of The South Carolina Court of Appeals filed December 22, 1997. While the Motion for Relief was pending, Discount seized Petitioner's Chrysler on February 26, 1999. A $2,000.00 Bond was executed under 28 U.S.C. § 2101(f) on March 5, 1999. However, the Motion was not considered and on January 16, 2003, the Petitioner filed the Motion to Dismiss. Discount through their attorney did not file in Opposition until September 12, 2003.

The Petitioner contends that the Order of Special Circuit Judge Curtis L. Coltrane filed September 15, 2003 is void *ab initio* because of a lack of jurisdiction, the Petitioner suffered legal prejudice as a result of the Court's actions and that the Court did not recognize case law Noack Enterprises, Inc. v. Country Corners Interiors, Inc., 290 S.C. 475, 351 S.E. 2d 347 (Ct. App. 1986), that where there is an allegation of impact on the public interest, this is sufficient grounds to withstand a Motion to Dismiss.

The application of any type of preclusion doctrine may not be applied where unfairness or injustice results, or public policy requires it, Carrigg v. Cannon, 347 S.C. 75, 552 S.E.2d 767 (Ct. App. 2001), "thus the application of *res judicata* will not be applied where it will contravene other important public policies." It would frustrate the purpose of the South Carolina consumer laws. It would be in direct contravention with statutorily expressed policy including policy expressed in federal law. The Plaintiff's attorneys must prove adjudication on the merits in the former suit.

ARGUMENT I

Whether the Judgment of Curtis Lee Coltrane, Master-in-Equity, Special Circuit Judge for the Fourteenth Judicial Circuit of South Carolina entered on September 15, 2003 is void *ab initio* due to the fact that the case was pending in the Supreme Court of South Carolina as of September 10, 2003 and due notice was provided to Judge Coltrane and attorneys for South Carolina Discount Auto of Beaufort?

The Order in question is susceptible to scrutiny because on September 10, 2003 the Petitioner removed the case to the Original jurisdiction of the Supreme Court of South Carolina because of the supervisory powers that court possesses over the courts of the state. Due notice was provided to both the Master-in-Equity, Special Circuit Judge Curtis L. Coltrane and attorneys for South Carolina Discount Auto Center of Beaufort, Ralph E. Tupper and James A. Grimsley, III. The Supreme Court of South Carolina provided copies of the September 25, 2003 and the November 6, 2003 Orders as can be noted in the cover letters. The Petitioner contends the hearing conducted without attendance by the Petitioner was without jurisdiction and the Order void *ab initio*. The Petitioner was concerned the Plaintiff's Memorandum filed September 12, 2003 just before the hearing left little time for a response. The Order of Judge Coltrane filed September 25, 2003 after the hearing

raises the question that it was prepared prior to the hearing and that the results favoring the Memorandum were predetermined. Those results focused on Dismissal and preclusion doctrines rather on the Petitioner pending motions. There was no apparent fair and meaningful judicial consideration of the motions for which the hearing was convened. Petitioner's Motion for Reconsideration filed September 25, 2003 and Plaintiff's Motion Opposing Reconsideration filed October 1, 2003 were never heard. The Form Orders dated January 6, 2004 and January 26, 2004 Case Ended were Judge Coltrane's response. The law provides that where there is an allegation of impact on the public interest, there are sufficient grounds to withstand a Motion to Dismiss, Noack Enterprises, Inc. v. Country Corners Interiors, Inc., 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986). The application of any preclusion may not be applied where unfairness or injustice results, Carrigg v. Cannon, 347 S.C. 75, 552 S.E.2d 767 (Ct. App. 2001), "thus the application of *res judicata* will not be applied where it will countravene other important public policies." It would frustrate the purpose of the South Carolina consumer laws and be in direct conflict with statutorily expressed policy including policy expressed in federal law.

ARGUMENT II

Whether the facts and evidence support the contention that the trial court was corrupt, allowed undue influence causing judgments to be tainted and whether the judicial conduct is subject to Article VI, U.S. Constitution and whether full and fair consideration and equal protection were available as a right under the Fourteenth Amendment, U.S. Constitution to the Petitioner and other citizens?

The Petitioner contends that the Trial Court was corrupt based on the fact that the Beaufort County Magistrate Judge was corrupt because he was indicted for embezzlement of his Court's funds and resigned February 2, 2000 as evidenced by the Beaufort Gazette article in the Appendix. The Court of then Master-in-Equity, Special Circuit Judge Thomas Kemmerlin, Jr. dismissed Petitioner's appeal *de novo* and affirmed the Judgment of Magistrate Judge George B. Brown ordering Execution to proceed. Judge Kemmerlin, Jr. and then Clerk of Court Gloria Williams did not notify the Attorney General of any action brought by a private party pursuant to the statutory requirements § 39-5-140(b). The Act authorizes the Attorney General to bring an action in the name of the State to enjoin unfair or deceptive acts or practices in the conduct of any trade or commerce when to do so "would be in the public interest," South Carolina Code Ann. § 39-5-50 (1976), South Carolina Code Ann. § 39-5-70(a)

(1976) of the S.C. Consumer Protection and Unfair Trade Practices Act (1976). Section 39-5-140 of the Act provides that treble damages are recoverable. In Fields v. Yarborough Ford, Inc., 307 S.C. 207, 414 S.E.2d 164 (1992), the Supreme Court of South Carolina addressed the measure of damages available under the Act where the action involves fraud, breach of contract accompanied by a fraudulent act and unfair trade practices. The legislature intended (Section 39-5-20) in enacting the UTPA to control and eliminate "the large scale use of unfair and deceptive trade practices with the state of South Carolina". Note, Consumer Protection and the Proposed Unfair Trade Practices Act," 22 S.C.L. REV.767, 787 (1970); see Day, The South Carolina Unfair Trade Practices Act: Sleeping Giant or Illusive Panacea? 33 S.C.L.REV. 479 (1982). A body of case law derived from decisions has immerged under the Act including Noack Enterprises, Inc. v. Country Corners Interiors, Inc., 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986) and Daisy Outdoor Advertising Co. v. Abbott, 317 SC. 14, 451 S.E.2d 394 (Ct. App. 1994), goes further to look at practices injurious to the public interest and which are repetitive as are those practices here. Some cases inherently affect the public interest, Barnes v. Jones Chevrolet Co., 292 S.C. 607, 358 S.E.2d 156 (Ct. App. 1987), involving repair bill padding because of its potential for repetition. At the time Discount initiated this action, they had six dozen other cases pending before Beaufort County Magistrate Judge George B. Brown even though they had been in business a short time.

Discount ignored their contract with AAA to provide a written estimate and lost the AAA endorsement as an authorized AAA repair facility. In agreeing to provide written estimates under the AAA contract, Discount contracted away protection under the Mechanic's Lien Laws. The Mechanic's Lien Laws, South Carolina Code Ann. § 29-5-10 *et seq.* for which the Automotive Dealer's Association is a powerful lobby in the State allows a repair facility to repair anything they want even if the customer did not authorize the work. In ascertaining the intent of the South Carolina legislature in enacting the South Carolina Consumer Protection and Unfair Trade Practices Act (1976), courts are required to interpret the language of this State's Act, South Carolina Department of Social Services v. Forrester, 282 S.C. 512, 320 S.E.2d 39 (Ct. App. 1984) and to construe the language of the Act in light of the Act's intended purpose. The legislature intended to control and eliminate "the large scale use of unfair and deceptive trade practices within the state of South Carolina such as those practiced under the Mechanic's Lien Law. The South Carolina Supreme Court first defined deceptive in State ex rel McLeod v. Brown, 278 S.C. 281, 294 S.E. 281, 294 S.E.2d 781 (1982) following the approach of the Fourth Circuit. The South Carolina Court of Appeals further refined the definition in State ex rel. McLeod v. C & L Corp., 280 S.C. 519, 525, 313 S.E.2d 334, 338 (Ct. App. 1984); *accord* Dowd v. Imperial Chrysler-Plymouth, Inc., 298 S.C. 439, 381 S.E.2d 212 (Ct. App.1989); Inman v. Ken Hyatt Chrysler-Plymouth, Inc., 294

S.C. 240, 363 S.E.2d 691 (Ct. App. 1988). Federal Courts construing § 5 (a)(1) of the Federal Trade Commission Act 15 U.S.C. § 45(a)(1) have reached the same conclusion, Trans World Accounts, Inc. v. FTC, 594 F.2d 212 (9th Cir. 1979); Rayex Corp. v. FTC, 317 F. 2d 290 (2nd Cir. 1963); PepBoys-Manny, Moe & Jack, Inc. v. FTC, 122 F.2d 158 (3rd Cir. 1941). The Petitioner contends the South Carolina Consumer Protection And Unfair Trade Practices Act (1976) and the relevant body of case law supercedes other law and expresses the more recent intent of the legislature over the widely known injurious practices that the South Carolina's Mechanic's Lien Laws promote. There is a conflict of law to which the South Carolina Consumer Protection and Unfair Trade Practices (1976) guided by the interpretation given by The Federal Trade Commission Act § 45 (a)(1) and federal courts to §5 (a)(1) of that Act should prevail.

Article VI, U.S. Constitution states that the Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States shall be bound by

Oath or Affirmation, to support this Constitution.

Article IV, U.S. Constitution provides the right of the people to be secure in their persons, houses, papers, and other effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Court is asked to determine whether South Carolina offered due process, equal protection, meaningful access to its courts including fair hearings and impartial decisions or whether under established rules of law the courts have so far departed from the constitutional course as to warrant examination of their conduct. Alexander Hamilton in The Federalist Papers, No. 78 regards the role of the judiciary in such matters. Because state courts are the primary alternative to federal courts, the scope of the federal judicial power is crucial in determining the authority of state courts in their actions. Federal due process rests upon state authority applying the law correctly and conferring the appellate remedy for effective exercise. In light of the fact that the state courts are required to apply federal constitutional standards, "it is not surprising that this court has become more interested in the application and development of federal law by state courts," Mitchum v. Long, 463 U.S. 1032 (1983). Long ago Chief Justice John Marshall wrote in Cohens v. Virginia, 19 U.S. (6Wheat.) 264 (1821), "that state courts often could

not be trusted to adequately protect federal rights because in many states, judges are dependent for office and salary on the will of the legislature." A similar view can be found in The Federalist Papers, No. 78. Martin v. Hunter's Lessee, 14 U.S. (1Wheat.) 304 (1816), was the first case to establish the Supreme Court's authority to review state court judgments. The more recent case Cooper v. Aaron, 358 U.S. 1 (1958), signed by each justice, stated the power of the Court to review actions of state officials and state legislatures. Article VI, U.S. Constitution makes the Constitution binding on state officials by oath or affirmation.

42 U.S.C. § 1983 creates a cause of action against any person, who, acting under color of state law, abridges rights created by the Constitution and laws of the United States. The law creates a legal entitlement to relief, against those, who act pursuant to state government authority violate federal law. In adopting the statute, members of Congress were particularly concerned about the unconstitutional conduct by judges, Mitchum v. Foster, 407 U.S. 225 (1972). The Fourteenth Amendment, U.S. Constitution, Section 5, authorizes enforcement and injunction of illegal activities which violate due process and equal protection as related to attempts to enforce the illegal judgment of Magistrate George B. Brown. The U.S. Supreme Court has held that the Constitution applies to actions by governments and their employees. Two cases confront the question of when private actions should be deemed to occur

under the color of law because of their close relationship to the acts of government officers such as these officers of the court and judicial authorities.

Meaningful access to courts is an essential aspect of due process, Windsor v. Mcveigh, 93 U.S. 274 (1886); Boddie v. Connecticut, 401 U.S. 371 (1971), "a state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the due process clause." In Home Telephone and Telegraph Co. v. Los Angeles, 227 U.S. 278 (1913), the Supreme Court ruled that actions taken by an officer in his or her official capacity constitute state action, whether or not the conduct is authorized by state law. The Court held that a § 1983 suit was available even though adequate state remedies were potentially available. A plaintiff need not exhaust state judicial remedies even if those remedies appear completely adequate. The Court stated that § 1983 granted the federal courts a "paramount role in protecting constitutional rights." Fundamental unfairness and preclusion issues provide an even stronger reason for allowing § 1983 relief.

ARGUMENT III

Is there a presumption that the law governing auto repairs in South Carolina does not meet constitutional muster but should be viewed pursuant to the more recent S.C. Consumer Protection and Unfair Trade Practices Act

reflecting federal law and legislation in a majority of other states including neighboring North Carolina reforming auto repair practices?

The South Carolina Mechanic's Lien Law, South Carolina Code Ann. § 29-5-10 *et seq.* relied on by auto repair shops for protection of fraudulent business practices and abuse of process is in conflict with both federal law including the Federal Trade Commission Act § 45(a)(1) and § 5(a)(1), the South Carolina Consumer Protection and Unfair Trade Practices Act (1976), and the Fourteenth Amendment, U.S. Constitution. Mechanic's Lien Laws are offensive and incompatible to the South Carolina Consumer Protection and Unfair Trade Practices Act (1976) and The Federal Trade Commission Act § 45 (a)(1) as well as the U.S. Constitution. Under that law, someone can bring their car in for an oil change and receive a transmission overhaul. Shops can repair anything they want and if the customer refuses to pay for unauthorized work to keep the vehicle. The situation in South Carolina and 18 other states prompted AAA to seek legislation governing auto repairs that will protect the customer. A AAA poll showed 91% of respondents favored reform. Excessive repair bills have long generated plenty of complaints with the Department of Consumer Affairs at the State Attorney General's Office. There have been legislative proposals over years that have been thwarted by intense lobbying efforts and the influence of the Automotive Dealers Association in the State.

This is important because repairs can sometimes implicate interstate commerce. Many states, now including North Carolina have amended their laws to require written estimates and other protections. The proposal would impact the current Mechanic's Lien Law to the extent that it would negate the law if the repair facility did not provide a written estimate. Currently 36 states have written estimate laws. The attention this problem has gotten nationwide raises the presumption that these laws are unconstitutional and that there is a lack of uniformity of law nationwide. As written, the South Carolina Mechanic's Lien Laws are in conflict with the Federal Trade Commission Act 15 U.S.C. § 45(a)(1) and § 5 (a)(1) and the body of federal case law. The Act includes a legislative mandate that state courts "will be guided by" FTC and federal court interpretations of the FTC Act from time to time amended. Under substantive due process analysis, any law or policy that restricts or impairs a fundamental right, "is subject to strict scrutiny" in determining its constitutionality. This due process guarantee ensures a fair decision making process before government impairs property rights without due process of law. Substantive due process allows a court to examine the constitutionality of the underlying legislation.

The Court may assume jurisdiction pursuant to Article III because there has been injury in fact to warrant judicial intervention establishing Petitioner's standing to seek a determination of the underlying statute. The public interest component is satisfied where there is a threat of continuation or potential for repetition.

CONCLUSION

In consideration of the issues presented in this Petition, raising important questions of federal law, Certiorari should be granted.

Respectfully submitted,

Nancy D. Jonas

Nancy D. Jonas
Petitioner, *pro se*

Dated: November 13, 2006
Beaufort, South Carolina

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 2006

-◆-

NANCY D. JONAS
Petitioner,

v.

SOUTH CAROLINA DISCOUNT AUTO CENTER
Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of South Carolina

PETITION FOR WRIT OF CERTIORARI

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN MAGISTRATE'S COURT
CIVIL CASE NO. 9601052

DISCOUNT AUTO CENTER,
Plaintiff (s),

vs.

JUDGMENT

NANCY D. JONAS,
Defendant (s).

The issues in this action were tried in the magistrate's court before Judge George B. Brown in a jury/non-jury proceeding on 10/16/96 at which time a verdict was rendered on that date for $815.55, and /or other relief as stated below:

---

in addition to costs in the amount of $30.00.

It is adjudged that the plaintiff, DISCOUNT AUTO CENTER recover from the defendant, JONAS, NANCY the account of $815.55, plus costs in the amount of $30.00 and /or relief as stated below:

Dated: 8/9/97

s/ George B. Brown
Magistrate

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	COMMOM PLEAS
	)	
COUNTY OF BEAUFORT	)	
	)	CASE NO.: 96-CP-07-
DISCOUNT AUTO CENTER,	)	1823
PLAINTIFF,	)	
V.	)	ORDER
	)	
NANCY D. JONAS,	)	Filed 8/12/97
DEFENDANT.	)	Time 2:11 PM
	)	

The defendant appealed a decision against her in which the trial justice awarded the Plaintiff $812.55 for repairs made to the defendant's vehicle and dismissed the counterclaim asking that the Plaintiff's bill be reduced to $560.00 and the Plaintiff be requested to pay the court costs. The appeal raised objections to the facts as found by the Judge. No transcript of the testimony was made. I can from the Return only assume that the Judge resolved disputed facts in favor of the Plaintiff to the extent the judgment reflects. I cannot - without a showing that there was no sufficient evidence upon which to make the findings - amend the findings of fact.

APPEAL DISMISSED AND JUDGMENT BELOW AFFIRMED.

/s/ Thomas Kemmerlin, Jr.

Beaufort, South Carolina
August 12, 1997

Thomas Kemmerlin, Jr.
Special Circuit Judge

To the parties: Here is a copy of an Order entered in the captioned case. /s/ Thomas Kemmerlin, Jr.
Thomas Kemmerlin, Jr.

Above mailed to parties on August 12, 1997.
/s/ Thomas Kemmerlin, Jr.
Thomas Kemmerlin, Jr.

103719

STATE OF SOUTH CAROLINA JUDGMENT IN A CIVIL CASE
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS CASE NO 96-CP-7-1823

DISCOUNT AUTO CENTER NANCY JONAS

PLAINTIFF (S) DEFENDANT (S)

CHECK ONE:

[ ] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

[ ] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[X] ACTION DISMISSED (CHECK REASON): [ ] Rule 12(b), SCRCP; [ ] Rule 41(a), SCRCP (VOL NON-SUIT); [ ] Rule 43(k), SCRCP; (Settled); [ ] Other _____

[ ] ACTION STRICKEN (CHECK REASON): [ ] Rule 40(j) SCRCP; [ ] Bankruptcy; [ ] Other _____

IT IS SO ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by the Court:

Dated at Beaufort, South Carolina, this 12 day of Aug, 1997.

/s/ Thomas Kemmerlin, Jr.
Presiding Judge

This judgment was entered on the 12 day of Aug, 1997, and a copy mailed first class this ___ day of ___, 19 ___ to attorneys of record or to parties (when appearing pro se) as follows:

_____
_____
_____
ATTORNEY (S) FOR THE PLAINTIFF (S)

Pro-Se
P.O. Box 1563
Beaufort, SC 29901
ATTORNEY (S) FOR THE DEFENDANT (S)

/S/ MILDRED M MEEN
DC CLERK OF COURT

SCRCP FORM 4 (REV. 2/96)

State of South Carolina

Magistrates Court

County of Beaufort 96-01052

Discount Auto Center
Plf

vs Order to Extend Time for Appeal

Nancy Jonas
Def

The above referenced appeal was heard by the Honorable Thomas Kemmerlin, Jr., Special Circuit Judge for Beaufort County, on August 12, 1997.

The appeal was dismissed by order of Judge Kemmerlin on August 12, 1997. SCRCP Form Order (Form Order) was sent from the office of the Clerk of Court to Ms. Jonas indicating, action dismissed. This was in error. The appeal had been dismissed, not the action.
Ms. Jonas believed the Court had ruled in her favor until she received a notice from the Beaufort County Sheriff that a judgment had been entered against her. The time for appeal had passed when the letter from the Sheriff was received.

Therefore, in the interest of justice I am extending the time for appeal to October 12,1997 and it is so ordered.

/s/ George B. Brown
George Brown, Magistrate
Beaufort County

THE SOUTH CAROLINA COURT OF APPEALS

Discount Auto Center.....Respondent,

v.

Nancy Jonas.....Appellant.

ORDER

Discount brought suit against Nancy Jonas in Beaufort County Magistrate's Court. The magistrate found in favor of Discount Auto Center. Jonas appealed the ruling of the circuit court. By order dated August 12, 1997 the circuit court dismissed Jonas's appeal. Jonas admits she received written notice of entry of order on August 12, 1997. Moreover, the text of the August 12, 1997 order indicates each party was served with a copy of the order on the same date. Jonas also received a separate form order erroneously indicating that the circuit court dismissed the action, rather than the appeal.

Jonas filed and served her notice of appeal October 10, 1997. In connection with the notice of appeal, Jonas submitted to this court an undated letter

from the Beaufort County Magistrate purporting to extend her time for appeal due to the issuance of the erroneous form order.

Discount Auto Center filed a motion to dismiss Jonas's appeal for failure to timely file and serve the notice of appeal. Jonas filed a return to the motion, arguing the magistrate's ex parte order extending her time to appeal is of full legal force and effect.

Rule 203(b)(1), SCACR, provides a notice of appeal shall be served within thirty days of receipt of written notice of the entry of the order on appeal. Here, Jonas failed to serve her notice of appeal until more than thirty days had elapsed from the time she received written notice of entry of the order. Timely service of the notice of appeal is jurisdictional. Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985). This court has no authority to extend the time for service of the notice of appeal. Rule 234(b), SCCR. Thus, Jonas's untimely appeal is insufficient to confer jurisdiction upon this court.

Moreover, the magistrate's order extending Jonas's time to appeal is without legal effect. Once Jonas appealed the case tot the circuit court, the magistrate was divested of jurisdiction over the case.

See, e.g., Rule 204, SCACR; Andrick Development Corp. v. Maccaro, 280 S.C. 103, 311 S.E.2d 95 (Ct. App. 1984)(service of notice of appeal divests the lower court of jurisdiction). For the foregoing reasons, the motion to dismiss the appeal for failure to timely serve the notice of appeal is GRANTED.

IT IS SO ORDERED.

12/18/97 /s/ C. Tolbert Goolsby, Jr., J.

cc: Nancy Jonas
Scott A. Seelhoff, Esquire

FILED
12-19-97 dhp

The South Carolina Court of Appeals

Discount Auto Center,.....Respondent,

v.

Nancy Jonas,.....Appellant.

ORDER

Appellant's motion for leave to petition the trial court for relief from judgment pursuant to Rule 60, SCRCP, is

GRANTED.

12/19/97 /s/ C. Tolbert Goolsby, Jr., J.

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	CIVIL ACTION NO. 9601052
COUNTY OF BEAUFORT	)	
	)	
DISCOUNT AUTO CENTER	)	MOTION FOR RELIEF FROM
	)	JUDGMENT
PLAINTIFFS	)	
	)	
VS.	)	
	)	
NANCY D. JONAS	)	
	)	
DEFENDANT	)	
	)	

This Motion arises where the South Carolina Court of Appeals on December 19, 1997 granted the Appellant, Nancy Jonas, leave to petition for Relief from Judgment in an exercise of their authority and power and for good cause.

Pursuant to this order, Relief is being sought of the trial court order the South Carolina Rules of Civil Procedure, Rule 60, SCRCP, the South Carolina Code of Laws Annotated, the case law and authority as may be presented to the court.

This motion is being made subject to disposition by the Court of Appeals of the Appellant's Petition to Reinstate as related to the Court's ruling on the Respondent's Motion to Dismiss. Until a ruling is rendered regarding the Petition to Reinstate, which includes a request for Summary Judgment, the Applicant requests that this Motion for Relief be held in abeyance subject to these rulings and any further, action which may be permissible under the Rules.

She argues respectfully that the Judgment however is not equitable for reasons stated in the Appellant pleadings to the Court of Appeals (Case No. 9706239) which she incorporates into this motion to the trial court in presenting her request for Relief from Judgment. The specifics will not be reiterated here at this time but relate to the issue that Discount quoted a price for auto repair which they knew or should have known they would have exceeded and in fact their bill was excessive under statutory law. It was felt there were elements of inducement misrepresentation and deceit to obtain authorization for the work and in the performance of that work which in some respects poorly done, bringing into question the subsequent fitness of the vehicle. Further, there is other concern for the public interest as related to the Consumer Protection Statutes and Unfair Trade Practices Act of the state excessive use of process where private rights are connected with the public interest.

Based on the foregoing and other evidence and authority which may be presented to the court, the Petitioner asks that the trial court grant her Relief from the judgment in its entirety when timely, grant equitable relief on its own motion if necessary, and award her costs which she has sustained in defending this litigation against the action of Discount Auto Center, Paul and Donna Corfe and employees.

Respectfully,

s/ Nancy D. Jonas

P.O. Box 1563, Charles Street
Beaufort, SC 29901
800-791-1558

January 12, 1998
Beaufort, SC

THE SUPREME COURT OF SOUTH CAROLINA

Brenda F. Shealy
Interim Clerk of Court

P.O. Box 11330
Columbia, SC 29211
(803) 734-1080

September 10, 1998

CERTIFIED AND REGULAR MAIL

Ms. Nancy D. Jonas
Post Office Box 1563
Beaufort, South Carolina 29901

Re: Discount Auto Center v. Nancy D. Jonas
Case No. 96-CP-07-1823

Dear Ms. Jonas:

The Court has issued the following Order on your Petition for Certiorari in the above referenced matter:

"Petition for Writ of Certiorari denied.

s/ Ernest A. Finney, Jr. CJ
For the Court

September 10, 1998."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,

s/ Jean J. Peebles
ACTING DEPUTY CLERK

JJP/sbm

Cc: Scott A. Seelhoff, Esquire
The Honorable Kenneth A. Richstad
The Honorable W. Henry Jackson
West Publishing Company

THE SOUTH CAROLINA COURT OF APPEALS

Discount Auto Center, Respondent,

98 SEP 14 PM 2:12
Beaufort County
Clerk of Court
Beaufort, SC

Nancy Jonas, Appellant.

Honorable Thomas Kemmerlin, Jr.
Beaufort County
Trial Court Case No. 96-CP-07-1823

Remittitur

Petition for Writ of Certiorari in the above matter having been denied by Order of the South Carolina Supreme Court on September 10, 1998, it is the order of this Court that the appeal in this matter be and hereby is dismissed and remitted to the Clerk of Court for Beaufort County.

IT IS SO ORDERED.

s/ Kenneth A. Richstad Clerk
For the Court

Columbia, South Carolina
September 11, 1998
Original to: The Honorable W. Henry Jackson
Cc: Ms. Nancy D. Jonas
Scott A. Seelhoff, Esquire

THE SUPREME COURT OF SOUTH CAROLINA

Daniel E. Shearouse
Clerk of Court
Brenda F. Shealy
Deputy Clerk

P. O. Box 11330
Columbia, SC 29211
(803) 734-1080

November 6, 1998

CERTIFIED AND REGULAR MAIL
Ms. Nancy D. Jonas
Post Office Box 1563
Beaufort, SC 29901

Re: Discount Auto Center v. Nancy Jonas
Case No. 96-CP-07-1823

Dear Ms. Jonas:

The following Order has been endorsed on your Motion to Recall Remittitur And For Reconsideration in the above-referenced case on appeal:

> "Motion to Recall Remittitur
> and for Reconsideration is denied.
>
> s/ Ernest A. Finney, Jr. CJ
> For the Court
>
> November 6, 1998."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,
s/ Jean J. Peebles
ACTING DEPUTY CLERK

JJP/sbm

Cc: Scott A. Seelhoff, Esquire
The Honorable Kenneth A. Richstad
The Honorable W. Henry Jackson

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DISCOUNT AUTO CENTER
PLAINTIFF(S)

VS.

NANCY D. JONAS

DEFENDANT.

IN THE MAGISTRATE'S COURT
CASE NO. 9601052

MOTION TO DISMISS

BEAUFORT COUNTY MAGISTRATE
CENTRAL COURT NORTH
2003 JAN 16 PM 1:02

Please take notice that I, Nancy D. Jonas, move that the Court Dismiss the case in favor of the defendant upon the following:

1. The facts have shown the plaintiff has no right to relief sought. The Defendant initially requested an oil change and the $59.95 engine tuning before traveling out of stat that day. The Plaintiff found other repairs and stated that additional work would result in thee amount of $400.00-$500.00. The plaintiff and defendant agreed to the repair costing $400.00-$500.00. The bill however was over $800.00 although no further work was agreed to; no further authorization given. When the defendant said she would pay Discount what was contracted, Discount refused stating they would get the $800.00. Discount then filed a lawsuit for the $800.00 and was awarded that amount by then Magistrate judge George B. Brown. The case should be dismissed for fraud upon a citizen of South Carolina under the state's consumer protection laws.
2. The case was tried in Magistrate's Court before the former Magistrate George B. Brown who later left

office for embezzlement of court funds. In light of judicial corruption, the defendant believes the case is tainted and is subject to dismissal. Other improper judicial bias in the case is a likely inference. The court compromised the defendant's due process protection and the constitutional right to a fair trial and the equal protection of the laws.

3. The South Carolina Mechanic's Lien Laws are to the view of many subject to constitutional challenge and scrutiny under the South Carolina and U.S. Constitution as well as Consumer Protection Laws. AAA Carolinas has identified this specific practice as problematic. This abuse and fraud upon consumers by repair facilities is opposed by AAA Carolinas which has a lobbying effort against. Recently it was reported by AAA's Magazine that S.C. State Senator David Thomas introduced a bill to require repair facilities to give written estimates before working on a vehicle because of the high incidence of repair bills that have generated plenty of complaints. The state's automotive dealers oppose the legislation. Currently, a repair facility can repair anything they want.
4. Discount Auto Center has repeatedly attempted to execute on the defendant's property despite a Stay obtained in this court. The Stay has not been rescinded or lifted. The Plaintiff has on more than one occasion refused to demonstrate compliance with the Order. Discount has wrongly filed a bad credit report against the defendant before the matter has been determined by the court. The harm is actual and demonstrates that the Discount Auto Center suit is not a good faith action but is predatory misuse of the court in collaboration with the former Magistrate Judge George B. Brown.

For this and other reasons, the defendant prays the court will dismiss or set aside the lawsuit relieving the defendant of the fraudulent judgment, nullify the Notice of Execution, and award costs in this matter to the defendant under the Frivolous Lawsuit Statute of South Carolina and other damages as the court may deem proper. The defendant's offer to fulfill the terms of the contract with Discount was refused by Discount Auto Center who stated they would win the inflated amount in Beaufort County's Magistrate Court under Judge Brown, the defendant prays no costs will be taxed to the defendant. The case has been prosecuted by Discount Auto Center with malicious intent and false pretense.

Respectfully submitted,
s/ Nancy D. Jonas
202 Tennis Villa Circle
Fripp Island, South Carolina 29920
Tel: 1-800-791-1558 (voice mail)
Defendant, pro se

Dated: January 16, 2003

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS CASE NO. 96-CP-07-1823
COUNTY OF BEAUFORT	MAGISTRATE'S COURT CASE NO. 9601052
Discount Auto Center, Plaintiff,	
v.	Notice of Motion and Motion for Order to Recuse
Nancy D. Jonas, Defendant.	Judge Thomas Kemmerlin, Jr.

PLEASE TAKE NOTICE that the defendant in this action moves the Presiding Judge of the Circuit Court of the Fourteenth Judicial Circuit, Jackson V. Gregory to Order that Judge Thomas Kemmerlin, Jr., Master-in-Equity, Special Circuit Judge By Appointment recuse/disqualify himself from any and all proceedings in this matter for good cause. The Order should include that the pending motion to Dismiss be stricken from Judge Kemmerlin's Roster for Beaufort County scheduled March 26, 2003 at 2:00 P.M and that the Court issue a Stay to restrain any further proceedings by Judge Kemmerlin.

This motion is based on the defendant's contention that Judge Kemmerlin's impartiality might reasonably be questioned in the case pursuant to S.C. Code of Judicial Conduct, codified S.C. Ann. § 20-7-1360 and other applicable authority.

The grounds are based on relevant provisions of the S.C. Code of Judicial Conduct, constitutional issues of due process and equal protection under the U.S. Constitution, Amendment 14 and Article VI as well as decisional and statutory law both state and federal.

The case came before Judge Kemmerlin, Jr. on appeal *de novo* from the oral decision of the Magistrate

Judge George B. Brown, where the Magistrate awarded the plaintiff $815.55, dismissed defendant's counterclaim repeated her offer to pay $560.00. The plaintiff and his wife had earlier refused the amount of the oral agreement under which the appellant authorized the work of $400.00 to $500.00 stating they would win the $815.55.

Judge Kemmerlin was aware of the offer but was unmoved. Instead, he affirmed the decision of Judge Brown and sustained the judgment of $815.55.

At trial, the Magistrate Judge George B. Brown did not fairly consider the evidence or give equal consideration to the defendant's contentions under standards of due process and equal protection. Judge Kemmerlin, Jr. upheld Judge Brown's decision and during the hearing did not allow a continuance so that material evidence might be obtained. A short while later, the Magistrate Judge George B. Brown left office for embezzlement of court funds. At trial, the defendant cited the S.C. Frivolous Lawsuit statute, the relatively new S.C. Consumer Protection and Unfair trade Practices Act which are based on the federal statute and contract law.

The plaintiffs were no doubt basing their action on the S.C. Mechanics Lien Laws which allow auto repair facilities to repair anything they want and if the customer refuses to pay for unauthorized work to keep the vehicle, even if the customer did not authorize the repairs. These laws are considered by many to be unconstitutional. The situation in the Carolinas and 18 other states has prompted AAA to seek legislation governing auto repairs that protect the consumer. There is no legal control over repairs. A recent AAA poll of its membership showed that members greatly favored reform. S.C. State Senator David L. Thomas, according to a AAA Carolinas report, recently introduced legislation which would require repair facilities

to address these issues. The legislation is pending because of the power of the automotive lobby in the state. The legislative attention these laws are receiving raises the presumption that these laws as they are currently are unconstitutional. The display of an ASE certified sticker is supposed to indicate the repair shop abides by good business practices. Despite the fact that Discount Auto Center displays the ASE certified sticker, Discount's actions in this instance were knowingly and willfully fraudulent. Records showed that Discount had over six dozen cases in Magistrate's in two years of business in Beaufort.

Discount has unlawfully and repeatedly attempted harm to defendant's by procuring writs of execution, has filed a bad credit report and otherwise has shown maliciousness causing the defendant substantial harm. This harm has occurred even at a time a Stay was in effect. The harm is actual and demonstrates the constitutional defects of the S.C. Mechanic's Lien Laws and that the courts in question further degrade the authority of these laws.

Both Judge Kemmerlin and Magistrate Judge George B. Brown knew or should have known that the judgment in the case was not in accordance with due process and standards of fairness. Discount Auto Center has been repeatedly aided by judicial authority in their misuse of the courts and process. Court records show that Discount had over six dozen cases in Magistrate Court in the first two years of business in Beaufort.

This case is illustrative of the class of cases where federal rights are infringed by a state court decree or by the application or administration of a state. These laws may be preempted by the power of the federal laws directed at consumer protection especially where there is evidence

that citizens of various states are repeatedly and deliberately harmed and request that these laws be amended. The S.C. Mechanic's Lien Laws seriously erode important constitutional and federal policy. They should not afford protection for dishonest conduct especially as these laws are susceptible to abuse and are connected to business transactions. Judge Kemmerlin and Judge Brown allowed Discount to misuse the law to administer harm. Because of the susceptibility of these laws to abuse and because there is no legal control system in place, AAA is offering five proposals to reform of auto repair laws:

1.)A detailed description of specific actions which are unfair or misleading with appropriate civil and criminal penalties; 2.)Customer rights and responsibilities displayed at their repair facilities; 3.) A written estimate of repair costs and a guarantee that the price will be within 10% of the estimate unless authorized by the customer; 4.)Repairs to be covered by a warranty for 90 days or 4,000 miles, whichever occurs first; 5.) Replaced parts returned to the customer except when a warranty or refund policy exists.

These reforms are meeting with procedural roadblocks in the S.C. legislature which has long been the dominant governmental body in South Carolina suggesting that federal intervention may be a justifiable recourse when the states' representatives appear to favor special interests over the welfare of citizens.

The motion for an Order to Recuse Judge Kemmerlin, Jr. in this instance may be justified based on a pattern of conduct argument. This is not an isolated event but the unlawful conduct of the type described here occurred with even greater intensity in three other cases. The cases came to Judge Thomas Kemmerlin through

Judge Brown. Their misconduct and the conduct of others who have participated in this scheme to defraud has resulted in substantial harm, significant expense and worry.

In other instances where cases were removed to federal court, Judge Kemmerlin, Jr. exercised his authority as a judge despite absolute proof that the decision of Judge Brown was unwarranted and despite the mandate and supporting case law suspending any further action in state court under the federal removal statute which effectuated 28 U.S.C. § 1446(d). This statute provides:

> Promptly after filing of such notice of removal of a civil action the defendant or codefendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such state court, which shall effect removal and the state shall proceed no further unless and until the case is remanded.

The federal court has exclusive jurisdiction. Judge Kemmerlin's Order's in other cases conflicted with relevant federal case law and with decisions of the state Supreme Court, Davis v. Davis, 229 S.E.2d 847 (1976). At this same time period, Judge Kemmerlin, Jr. wrote an *ex parte* postscript to the adverse part:

> *P.S. At the time I heard the appeal, you asked me about some papers served upon you purporting to be a suit in federal Court. I told you I thought it was just the ravings of a disappointed litigant who was foolish enough to think she knew some law. Now, after reading the papers, a copy of which I received this morning, I must point out that while I*

> *think it is just so much foolishness which I would toss out of Court on my own motion if I were the Federal Judge, I am not the Federal Judge, and perhaps you should seek counsel. I should not have said anything on the subject to you.*

Judge Kemmerlin, Jr. without legal authority as a matter of law held a hearing and issued unlawful order. The federal Judge did not dismiss *sua sponte*. Judge Kemmerlin then directed then Clerk of Court Gloria Williams to file his Order. A few days later, the judgment was placed on the judgment rolls and thereafter was subject to execution by those unaware of its invalidity.

In another instance, where the case was removed to federal court, Judge Kemmerlin, Jr. without legal authority entertained Motions to Dismiss and for Sanctions from the attorneys. Judge Kemmerlin scheduled and held a hearing for the Friday after Thanksgiving and notice through the attorneys participating in the scheme was very limited. Judge Kemmerlin's conduct corrupts the bar encourages disregard of the law.

One of the Motions which Judge Kemmerlin entertained requested sanctions alleging 'I had abused judicial process and filed frivolous pleadings solely to harass and embarrass the parties, and that I had filed pleadings that serve no other purpose than to waste the court's time when the plaintiff knew her claims against these defendants were groundless.' While the case was ongoing in federal court, Judge Kemmerlin allowed another attorney to present a Motion to Dismiss which he had no authority to consider. Subsequently, a copy of notice arrived drafted by the attorney indicating Judge Kemmerlin had requested the attorney draft an Order.

The Order confirmed that a hearing was held, arguments presented. The Order signed by Judge Kemmerlin stated "The Plaintiff is known to the court to file and prosecute time consuming and frivolous actions." "As to sanctions," Judge Kemmerlin's Order states, "I will, however, consider this Order as notice to the plaintiff of the requirements of Rule 11 of the South Carolina Rules of Civil Procedure and caution her with respect to future filings with this Court." He granted the Motion to Dismiss; but denied the motion from the attorneys for sanctions. The defendant believes that the Motion to Dismiss represented Judge Kemmerlin's attempt to support the attorney, where the plaintiff had remedy in federal court but not in state court.

In the only footnote I the Order, Judge Kemmerlin offered a prejudicial view of merits where he concluded 'the defendants simply settled an action ... That issue is not before me and I decline to comment on the merits of plaintiff's claims.' Three months after that, while the case was in federal court, I received a Motions Roster on which Judge Kemmerlin allowed the attorney who requested Sanctions to pursue his motion.

Wherefore, the defendant prays that the Presiding Judge Jackson V Gregory will grant the Motion for the Order to Recuse Judge Thomas Kemmerlin, Jr. from all proceedings in this matter and that the Order will include that the matter be stricken from Judge Kemmerlin's Motions Roster as scheduled for Wednesday, March 26, at 2:00 P.M. The defendant further requests the Court take action as may be appropriate upon the matter of judicial conduct.

Respectfully submitted,

s/ Nancy D. Jonas
Nancy D. Jonas
Charles Street
P.O. Box 1563
Beaufort, SC 29901-1563
Tel: 1-800-791-1558

March 25, 2003

State of South Carolina P County of Beaufort Discount Auto Center, Plaintiff, -vs- Nancy D. Jonas, Defendant.	)	In the Court of Common Pleas C/A No.: 96-CP-07-1823 **Plaintiff's Memordum In Opposition Defendant's Motions**

TO: DEFENDANT NANCY JONAS, *PRO SE*:

NOW COMES the Plaintiff, Discount Auto Center, a South Carolina Corporation, who in responding to all known outstanding motions and /or petitions of Defendant Nancy Jonas, respectfully asserts as follows :

FACTS

1. The Plaintiff was awarded judgment in the amount of $812.55 (eight hundred twelve dollars fifty-five cents), plus costs of $30.00 (thirty dollars) by the Beaufort County Magistrate in the matter of *Discount Auto Center v. Nancy Jonas*, Case No.; 96-1052, after a bench trial on October 16, 1996.

Both parties were present at the trial.

2. Defendant Nancy Jonas thereafter filed an Appeal with the Beaufort County Court of Common Pleas, at which time the matter was assigned Civil Action No.: 96-CP-07-1823. The Magistrate submitted to the Court his Return dated June 12, 1996. (Exhibit 1)

3. The Appeal was subsequently heard by Thomas Kemmerlin, Jr., Master-in-Equity, who issued his Order dated August 12, 1997, which dismissed the Defendant's Appeal and affirmed the Judgment of the Magistrate. (Exhibit 2)

4. Thereafter, Nancy Jonas filed her Notice of Appeal with the South Carolina Supreme Court, which assigned the Appeal to the South Carolina Court of Appeals. The Court of Appeals, by written opinion (unpublished), affirmed the judgment of the Magistrate's Court, Defendant/Appellant Nancy Jonas petitioned the South Carolina Supreme Court for Writ of Certiorari, which was denied on September 10, 1998; the Appeal was dismissed and remitted to the Beaufort County Clerk of Court. (Exhibit 3)

5. Defendant/Appellant Nancy Jonas filed with the South Carolina Supreme Court a Motion

to Recall Remittitur and for Reconsideration, which was denied. (Exhibit 4)

6. Defendant/Appellant Nancy Jonas, on or about March 1, 1999, then filed with the United States Supreme Court a Motion for Leave To File and Petition for Injunction in this matter. (Exhibit 5) On information and belief, said Motion/Petition was denied and the proceeding dismissed by the United States Supreme Court.

ARGUMENT

The defendant/Appellant Nancy Jonas, on information and belief, filed certain motions in which she essentially is asking the Court to dismiss the Judgment entered against her by the Beaufort County Magistrate, and upheld by the Master-in-Equity and the South Carolina Court of Appeals, as set forth above. The Plaintiff would assert that the defendant has exhausted her remedies, having been denied certiorari by the South Carolina Supreme Court and with the United States Supreme Court dismissing her appellate efforts.

Further, the Plaintiff is informed and believes that the Defendant should be estopped in her pursuit of additional motions and/or appellate actions to resist enforcement of the judgment issued in this matter. Any motions filed by the

Defendant at this time should be denied, in accordance with the doctrine of *res judicata*. "Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues." J. Flanagan, South Carolina Civil Procedure, p. 642 (1996). In applying the affirmative defense of res judicata to the appellate process, it can be seen that judicial economy would not be served in this case. Additionally, the Defendant's actions/motions can be considered harassment in that the Plaintiff is forced to relitigate the same issues previously raised at the trial of this case, in addition to the four (4) higher Courts involved in the first appellate process.

Under the doctrine of res judicata, " [a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n of South Carolina*, 294 S.C. 9, 362 S.E. 2d 176, 177 (1987). If the Defendant asserts new issues not previously addressed to the trial court and four appellate Courts, she is barred from doing so at this time.

CONCLUSION

Therefore, the Plaintiff prays this Honorable Court

deny all of the Defendant's pending motions in this matter, and enforce the judgment issued by the Magistrate's Court as detailed in his Return dated June 12, 1997, and therefore (thereafter) affirmed at all appellate levels.

TUPPER GRIMSLEY & DEAN, P.A.

/s/ By: James A. Grimsley, III
James A. Grimsley, III
Attorney for Plaintiff
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524- 1116

Beaufort, South Carolina
Dated: September 12, 2003

STATE OF SOUTH CAROLINA)		IN THE COURT OF
	)	COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NUMBER
		96-CP-07-1823
		JUDGMENT ROLL 103719
DISCOUNT AUTO CENTER,	)	FILE STAMP
PLAINTIFF,	)	2003 SEP AM 11:39
vs.	)	**ORDER** Beaufort Co.
	)	Clerk of Court
NANCY JONAS,	)	
DEFENDANT.	)	

This matter is before the undersigned upon a Motion to Dismiss filed by the Defendant Nancy D. Jonas in the above captioned case. The matters were set down for a heating at a roster meeting that occurred on August 21, 2003. Prior to the roster, Ms. Jonas contacted the undersigned's office and advised that she was ready to proceed. Ms. Jonas was notified that the matter was set down for hearing at 10:00 A.M. on September 15, 2003.

At the appointed time, the matter was called for hearing. Present were James A. Grimsley, III, and a representative of the Plaintiff. Ms. Jonas did not appear. A call was placed to Ms. Jonas' number as listed on the pleadings that she filed in the case, however, Ms. Jonas did not answer. The message on the answering machine did not identify the machine as being that of Ms. Jonas, but a message was left on an answering machine, nonetheless.

As of 10:30, A.M., September 15, 2003, no response had been received from Ms. Jonas, and she had not appeared.

Accordingly, the Defendants' Motion to Dismiss is denied for lack of prosecution.

In addition to the above, I would point out the record for this case reflects that it was tried before the

Beaufort county Magistrate in October of 1996. Thereafter, an appeal was filed to the Circuit Court for Beaufort County, South Carolina. The appeal was heard by the Hon. Thomas Kemmerlin, Jr., who issued his order affirming the result in the Magistrate's Court on August 12, 1997. The case was appealed to the South Carolina Court of Appeals, which affirmed the Order of Judge Kemmerlin. A Petition for Writ of Certiorari was filed with the South Carolina Supreme Court, which was denied on September 10, 1998. The South Carolina Court of Appeals Issued its Remittitur on September 11, 1998. A Motion to recall the Remittitur was denied by the South Carolina Supreme Court on November 8, 1998. It appears that Ms. Jonas filed an appeal to the United States Supreme Court. The Clerk's office file reflects that the appeal was finally dismissed on December 3, 1999 by a letter from the Hon. William K. Suter, Clerk of the United States Supreme Court.

All avenues of appeal have been exhausted by the Defendant, and this case is ended. The Clerk is directed to remove this case from the roster of active cases.

IT IS SO ORDERED.

/s/ Curtis L. Coltrane
Curtis L. Coltrane, Master-in-
Equity and Special Circuit Judge
for Beaufort County, South Carolina

Beaufort, South Carolina
This 15th Day of September, 2003

THE SUPREME COURT OF SOUTH CAROLINA

ORDER

The following matters are dismissed pursuant to Key v. Currie, 305 S.C. 115, 406 S.E. 2d 356 (1991), Because no extraordinary reason exists to entertain them in this Court's jurisdiction:

1. Timothy L. Marsh v. State. Motion for a Writ of Mandamus dated September 5, 2003. Case Tracking # 200327457.
2. Albert L. Evans v. State. Letter to Court received August 26, 2003. Case Tracking # 200327385.
3. Ernest E. Richardson, Jr. v. State. Letter to Chief Justice dated September 6, 2003. Case Tracking # 2003277478.
4. Nathaniel Mack v. State. Letter to Chief Justice dated August 20, 2003. Case Tracking #200327355.
5. Dell Carter. Letter to the Chief Justice dated September 7, 2003; Motion for Writ of Mandamus received September 9, 2003. Case Tracking # 200327480. (Pleicones, J., not participating).
6. Algian D. Blassingame. Letter to the Court received August 29, 2003. Case Tracking # 200327430.

7. Samuel Davis. Letter to the Chief Justice dated September 10, 2003. Case Tracking #200327490.
8. Anthony Sheppard. Letter to the Court dated September 2, 2003. Case Tracking # 200327491.
9. Nancy D. Jones v. State of South Carolina Discount Auto Center. Petition for Original Jurisdiction dated September 10, 2003. Case Tracking # 200327484.
10. Tony Taylor. Letter to the Court received September 15, 2003. Case Tracking # 200327520.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.
s/ John H. Waller, Jr. J.
s/ E. C. Burnett, III J.
s/ Costa M. Pleicones J.
Moore, J., not participating.

Columbia, South Carolina

September 25, 2003

THE SUPREME COURT OF SOUTH CAROLINA

Daniel E. Shearouse
Clerk of Court

Post Office Box 11330
Columbia, South Carolina 29211

Brenda F. Shealy
Deputy Clerk

(803) 734-1080

Fax (803) 734-1499

September 25, 2003

Ms. Nancy D. Jonas
Charles Street
P. O. Box 1563
Beaufort, SC 29901

Re: Jonas, Nancy v. Discount Auto

Dear Ms. Jones:

Enclosed is a copy of an order of the Court issued in this matter.

Very truly yours,
s/ Brenda F. Shealy
Deputy Clerk

BFS/mgh
Enclosure
Cc: Curtis Lee Coltrane, Esquire
Discount Auto Center
Ralph E. Tupper, Esquire
James A. Grimsley, III, Esquire
The Honorable Henry Dargan McMaster
Elizabeth R. McMahon, Esquire
Sheriff P. J. Tanner

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CIVIL ACTION NO.: 96-CP-07-1823
COUNTY OF BEAUFORT)	
)	
DISCOUNT AUTO CENTER)	
)	
PLAINTIFF,)	
-VS-)	PLAINTIFF'S OPPOSITION TO
)	DEFENDANT'S MOTION TO
NANCY JONAS)	RECONSIDER
)	2003 Oct – 1 PM 2:45
DEFENDANT.)	Beaufort County
)	Clerk of Court
)	Beaufort, S. C.

TO: DEFENDANT NANCY JONAS, *PRO SE*:

NOW COMES the Plaintiff, Discount Auto Center, a South Carolina Corporation, who responds to Defendant's Motion for Reconsideration of this Court's Order entered on September 15, 2003.

Defendant is not entitled to a reconsideration of this Court's Order dated September 15, 2003, because she failed to appear at the hearing that had been scheduled on her own motions that were pending before the Court. Defendant admits in her motion for Reconsideration that she was given notice of hearing, and indeed the Court even attempted to contact her the day of the hearing to inquire as to her whereabouts. Defendant cannot assert her own negligence and failure to appear to prosecute her motions as grounds for reconsideration of the September 15, 2003, Order. In addition, Plaintiff reiterates the arguments set forth in its original Memorandum in Opposition to Defendant's Motions, attached hereto as Exhibit 1. Finally, Plaintiff asserts that this case is not stayed, as the South Carolina Supreme Court issued its Order dismissing the Defendant's Petition for Original Jurisdiction, a copy of which is attached hereto as Exhibit 2.

For the foregoing reasons, Plaintiff requests this Court dismiss Defendant's Motion to Reconsider its September 15, 2003, Order. Any such further consultation would be futile.

TUPPER, GRIMSLEY & DEAN, P.A.

By: s/ James A. Grimsley, III
James A. Grimsley, III
Attorney for Plaintiff
Post Office Box 2055
Beaufort, South Carolina 29901-2055

Beaufort, South Carolina

Dated: October 1, 2003

Certificate of Service

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☐ depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.
- ☐ handing counsel a copy thereof
- ☐ by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 1st day of October 2003
By: s/ Stacy J. Canaday

THE SUPREME COURT OF SOUTH CAROLINA

ORDER

The following matter was dismissed pursuant to Key v. Currie, 305 S.C. 115, 406 S.E. 2d 35(1991), by order dated 25, 2003:

Nancy D. Jonas v. State of South Carolina Discount Auto Center. Petition for Original Jurisdiction dated September 10, 2003. Case Tracking # 200327484.

Petitioner has now filed a motion for reconsideration, which the Court has construed as a petition for rehearing. Because petitioner has shown no reason for this Court to reconsider its decision in this matter, the motion is denied.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.
s/ John H. Waller J.
s/ E. C. Burnett, III J.
s/ Costa M. Pleicones J.
Moore, J., not participating.

Columbia, South Carolina
November 6, 2003

THE SUPREME COURT OF SOUTH CAROLINA

Daniel E. Shearouse
Clerk of Court

Post Office Box 11330
Columbia, South Carolina 29211

Brenda F. Shealy
Deputy Clerk

(803) 734-1080
Fax (803) 734-1499

November 6, 2003

Ms. Nancy D. Jonas
Charles Street
P. O. Box 1563
Beaufort, SC 29901

Re: Jonas, Nancy v. Discount Auto

Dear Ms. Jonas:

Enclosed is a copy of an Order of the Court issued on your motion for reconsideration which the Court has construed as a petition for rehearing in the above entitled matter.

Very truly yours,
s/ Brenda F. Shealy
Deputy Clerk

DES/bfs
Enclosure
Cc: Curtis Lee Coltrane, Esquire
Discount Auto Center
Ralph E. Tupper, Esquire
James A. Grimsley, III, Esquire
The Honorable Henry Dargan McMaster
Elizabeth R. McMahon, Esquire
Sheriff P. J. Tanner

103719

STATE OF SOUTH CAROLINA JUDGMENT IN A CIVIL CASE
COUNTY OF BEAUFORT CASE NO 96-CP-07-1823
IN THE COURT OF COMMON PLEAS

File Stamp
DISCOUNT AUTO CENTER v. NANCY JONAS 2004 Jan-PM
Beaufort County
PLAINTIFF (S) DEFENDANT (S) Clerk of Court

[ ] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered

[ ] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[ ] ACTION DISMISSED: [ ] Rule 12(b), SCRCP; [ ] Rule 41(a), SCRCP, (Vol. Non-Suit); [ ] Rule 43(k), SCRCP (Settled); [ ] Other _____

[ ] ACTION STRICKEN: [ ] Rule 40(j) SCRCP; [ ] Bankruptcy; [ ] Binding Arbitration subject to the right to restore, to confirm, vacate or modify arbitration award; [ ] Other

---

IT IS SO ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by the Court

CASE ENDED.

Dated at Beaufort, South Carolina this 6th day of January, 2004.

s/ Curtis L. Coltrane
SPECIAL JUDGE

This judgment was entered on this 7 day of Jan, 2004, and a copy mailed first class this 12 day of Jan, 2004 to attorneys of record or the pro-se parties as follows

Pro Se
2506 Boundary St.
Beaufort, SC 29902
Attorney(s) for the
Plaintiff(s)

Pro Se
P. O. Box 1563
Beaufort, SC 29901
Attorney(s) for the
Defendant(s)

Dp J Pender
CLERK OF COURT

STATE OF SOUTH CAROLINA JUDGMENT IN A CIVIL CASE
COUNTY OF BEAUFORT 103719
IN THE COURT OF COMMON PLEAS CASE NO 96-CP-07-1823

DISCOUNT AUTO CENTER 2004 JAN AM 10:07 NANCY JONAS
Beaufort County
Clerk of Court
PLAINTIFF (S) Beaufort, SC DEFENDANT (S)

[ ] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

[ ] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[ ] ACTION DISMISSED: [ ] Rule 12(b), SCRCP, [ ] Rule 41 (a), SCRCP, (VOL NON-SUIT); [ ] Rule 43(k), SCRCP (SETTLED); [ ] OTHER

CASE ENDED

[ ] ACTION STRICKEN: [ ] Rule 40(j) SCRSP; [ ] Bankruptcy; [ ] Binding Arbitration subject to right to restore, to confirm, vacate or modify arbitration award; [ ] Other

IT IS ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by the Court

Dated at Beaufort, South Carolina this 26th day of Jan., 2004.

/s/ Curtis L. Coltrane
SPECIAL JUDGE

This judgment was entered on this 27 day of Jan, 2004, and a copy mailed first class this 27 day of Jan, 2004 to attorneys of record or the pro-se parties as follows

Pro se

Attorney(s) for the Plaintiff (s)

Pro se

Attorney (s) for the Defendant's

/s/ Meki (Mike) M. Killy
CLERK OF COURT

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(D), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Discount Auto Center, Respondent,

v.

Nancy D. Jonas Appellant

Appeal from Beaufort County
Curtis L. Coltrane, Special Circuit Judge

Unpublished Opinion No. 2005-UP-128
Submitted January 1, 2005 – Filed February 18, 2005

AFFIRMED

Nancy D. Jonas, of Beaufort, for Appellant

James A. Grimsley, III and Ralph E. Tupper, both of Beaufort, for Respondent

PER CURIAM: Nancy Jonas appeals a circuit order denying her motion to dismiss. We affirm. [1]

FACTS

In January 2003, Jonas filed a motion to dismiss in the Beaufort County Circuit Court, apparently with the intention of having a judgment entered against her in 1996 dismissed. A hearing on the motion was scheduled for 10 a.m. on September 15, 2003. Jonas was advised of the date and time of the hearing, and informed the court that she was ready to proceed.

The hearing was called at the scheduled time, but Jonas was not present. The court placed a call to her residence and, after failing to reach her, left a message reminding her of the hearing. As of 10:30 a.m., Jonas had still not appeared. The circuit court denied the motion for lack of prosecution and ordered the "case ended."

After contact from Jonas later that afternoon, the circuit court allowed her to file a motion to reconsider the denial of her motion. Following reconsideration, the circuit court again denied Jonas's motion to dismiss. This appeal followed.

ANALYSIS

Jonas argues the trial court erred in denying her motion due to, among other things, a vast conspiracy of corruption and collusion involving this state's circuit and appellate courts and Discount Auto Center. We disagree.

---

1 We decide this case without oral argument pursuant to Rule 215, SCACR.

As Jonas's present appeal and underlying motion attempt to retry issues previously resolved and not properly before the circuit court, we briefly recap this case's procedural history. In 1996, Discount Auto Center obtained a judgment against Jonas in magistrate's court for nonpayment of a bill arising from work done to her vehicle. In 1997, Jonas appealed the judgment to the circuit court, which affirmed the magistrate's decision. She then appealed the circuit court's decision to this court. Her appeal was dismissed as untimely. This court did, however, grant Jonas leave to petition the trial court for relief from judgment pursuant to Rule 60, SCRCP. Jonas filed this motion in the magistrate's court, but specifically requested in the petition that the motion not be decided until future matters concerning her appeal were resolved. Following the resolution of various motions regarding her appeal in this court (e.g. a petition to reinstate), a writ of certiorari was filed with the state supreme court. This petition was denied in September 1998. Following this court's issuance of remittitur, Jonas filed a motion in the state supreme court to recall remittitur. This motion was likewise denied. She then appealed to the United States Supreme Court, which finally dismissed her case on December 3, 1999.

More than three years later after the United States Supreme Court dismissed her appeal, Jonas filed the present motion, styled oddly as a "motion to dismiss." Nevertheless, a hearing was scheduled on the matter. Jonas was properly notified, but did not appear at the hearing.

A trial judge possesses the inherent power to dismiss actions sua sponte for a party's failure to prosecute with due diligence. Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 211-212, 493 S.E.2d 826,832 (1997); Small v. Mungo, 254 S.C. 438, 442-443, 175 S.E.2d 802, 803-804 (1970). On appeal, Jonas raises several matters regarding the substance of her long-resolved case, but only addresses her absence from the hearing by vaguely referencing some alleged filings with our state's supreme court. The only evidence in the record of any attempted availment of our supreme court's original jurisdiction is dated January 1999, more than three years prior to the scheduled hearing. As Jonas is challenging the trial court's denial of the motion, she bears the burden of producing a record sufficient to illustrate the alleged error. See McElveen v. McElveen, 332 S.C. 583, 601 n. 4, 506 S.E. 2d 1, 10 n. 4 (Ct. App. 1998). "This court will not consider facts that do not appear in the transcript of record." Windham v. Honeycutt, 290 S.C. 60, 64, 348 S.E. 2d 185, 187 (Ct. App. 1986).

Because we find no evidence supporting Jonas's claim that her absence from the hearing was justified, the circuit court's denial of her motion to dismiss is

AFFIRMED.

HEARN, C.J., GOOLSBY and WILLIAMS, JJ., concur.

THE SOUTH CAROLINA COURT OF APPEALS

Discount Auto Center, Respondent,

v.

Nancy D. Jonas, Appellant

The Honorable Curtis L. Coltrane
Beaufort County
Trial Case No. 1996-CP-07-01823

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

s/ Kaye G. Hearn C.J. Hearn

s/ C. Tolbert Goolsby, Jr. J. Goolsby

s/ H. Bruce Williams J. Williams

Columbia, South Carolina
April 21, 2005

Cc: Nancy D. Jonas
James A. Grimsley, III, Esquire
Ralph E. Tupper, Esquire

THE SUPREME COURT OF SOUTH CAROLINA

Daniel E. Shearouse
Clerk of Court

Post Office Box 11330
Columbia, South Carolina 29211

Brenda F. Shealy
Chief Deputy Clerk

(803) 734-1080
Fax (803) 734-1499

August 15, 2006

REGULAR AND CERTIFIED MAIL
Ms. Nancy D. Jonas
Charles Street
P.O. Box 1563
Beaufort, SC 29901

Re: Discount Auto Center v. Jonas, Nancy
1996-CP-07-01823

Dear Ms. Jonas:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

August 15, 2006."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,
s/ Daniel E. Shearouse
CLERK

DES/dmh

Cc: Ralph E. Tupper, Esquire
James A. Grimsley, III, Esquire
The Honorable Elizabeth M. Smith
The Honorable Kenneth A. Richstad

THE SOUTH CAROLINA COURT OF APPEALS

Kenneth A. Richstad
Clerk
V. Claire Allen
Deputy Clerk

Post Office Box 11629
Columbia, South Carolina 29211
1015 Sumter Street
Columbia, South Carolina 29211
Telephone: (803) 734-1890
Fax: (803) 734-1839

August 17, 2006

REMITTITUR

The Honorable Elizabeth M. Smith
102 Ribaut Road Rm 208
PO Box 1128
Beaufort, SC 29901-1128

Re: Discount Auto Center v. Jonas, Nancy
1996-CP-07-01823

Dear Mrs. Smith:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,
s/ Renee S. Johnson
Administrative Specialist

KAR/rj

Cc: Nancy D. Jonas
James A. Grimsley, III, Esquire
Ralph E. Tupper, Esquire

THE BEAUFORT GAZETTE

..... "Also Monday, County Council voted 6-5 to consent to Pre-Trial Intervention for former Magistrate George Brown.

..... Brown was indicted in February on charges of embezzling more than $12,000 from the Magistrate's office. He later resigned."

February 2000

BEAUFORT COUNTY SHERIFF'S OFFICE

Carl L. McCleod
Sheriff

Administration 803-525-7256
Troop Commander 803-525-7267
Fax Number 803-525-7399

January 13, 1998

Ms. Nancy Jonas
202 Tennis Villas
Fripp Island, South Carolina 29920

RE: Discount Auto Center vs. Nancy Jonas
Amount of Judgment: $980.56

A Judgment has been filed against you with the Clerk of Court for Beaufort County in the above referenced matter and Execution Against Property has been forwarded to this office.

The South Carolina Code of Laws, 1976, Chapter 39, Section 15-39-10 through 15-39 150, in part, orders the Sheriff to levy on sufficient amount of the Defendant's equity in personal property or real estate to satisfy the judgment subject to prior liens.
Failure to contact this office within ten days of the date of this letter with voluntary payment may result in additional interest, cost of levy fee, moving, storage and advertisement of sale.
PERSONAL OR BUSINESS CHECK NOT ACCEPTED.
This is the only notice you will receive before levy.

Sincerely,
s/ Jean T. Pender
Jean T. Pender
Administrative Technician

s/ James E. Heath
J.E. Heath
Captain

NOTICE

Under and by virtue of execution against property in the name of Nancy D. Jonas, I have this day levid upon this property and unless payments in the amount of $1,546.01 is made to me in the Sheriff's Office not later than 12-11-02 I will advertise same and sell as provided by law.
Dated 12-04-02

Sheriff of Beaufort County
s/ J. Gurganious
Deputy Sheriff
470-3189
or
470-7326 BPR

1990 Plym
4 Dr.
Tag# 765HSN

Key # 334524
Apt 202
Fripp Island
Tennis Villas
D-595
P-1513

12/10/02 NANCY D. JONAS 41659 PYMT IN FULL 1546.01

DATE	RECEIVED FROM	RECEIPT NO	AMOUNT RECEIVED

OFFICE OF THE SHERIFF
Beaufort County
P.O. Box 1758
Beaufort, SC 29901

s/ Pam Brown

41659

$1,546.01 released to Discount by Sheriff's Dept. pursuant to Notice of Execution and incorrectly stating for whom the funds were being collected